

**quinn emanuel trial lawyers | washington, dc**

1300 I Street NW, Suite 900, Washington, District of Columbia 20005-3314 | TEL (202) 538-8000 FAX (202) 538-8100

WRITER'S DIRECT DIAL NO.  
**(202) 538-8166**

WRITER'S EMAIL ADDRESS  
**mikelyle@quinnemanuel.com**

December 2, 2022

**VIA ECF**

The Honorable Jesse M. Furman  
United States District Court  
Southern District of New York  
40 Centre Street, Room 2202  
New York, NY 10007

Re: *New York City Transit Authority v. Express Scripts, Inc.*  
No. 1:19-cv-05196-JMF (S.D.N.Y.)

Dear Judge Furman:

Express Scripts, Inc. (“Express Scripts”) writes in response to the Court’s order setting this case for trial on January 31, 2023 and setting a final pretrial conference on January 27, 2023. ECF No. 209 (“Scheduling Order”). Because of the conflicts listed below, Express Scripts respectfully asks the Court to reschedule the trial and final pretrial conference for different dates—as early as the first half of March 2023.<sup>1</sup>

First, Express Scripts’ expert witness, Eric Rubenstein, is presenting at the Health Care Compliance Associate conference in Orlando, Florida on January 31, 2023 and has client commitments in Florida on February 1, 2023. If the trial were to continue into the following week, he has meetings scheduled between his clients and the federal Centers for Medicare & Medicaid Services in Dallas, Texas on February 9-10, 2023. Express Scripts asks that its expert be permitted to be present to observe during the entirety of the trial, and Mr. Rubenstein’s conflicts are not capable of being rescheduled.

Second, I will be serving as the principal trial counsel for Express Scripts. I, and other attorneys on the trial team, will be in Europe to defend depositions between January 30, 2023 to

---

<sup>1</sup> Express Scripts notes that New York City Transit Authority requested a jury trial in its Complaint and Amended Complaint (ECF No. 5-1, ECF No. 42), and the parties’ Joint Pretrial Order stated that the parties were requesting a jury trial (ECF No. 205 at 13), but the docket entry for the Scheduling Order referred to a bench trial (ECF No. 209).

**quinn emanuel urquhart & sullivan, llp**

ATLANTA | AUSTIN | BERLIN | BOSTON | BRUSSELS | CHICAGO | DALLAS | DOHA | HAMBURG | HONG KONG | HOUSTON | LONDON |  
LOS ANGELES | MANNHEIM | MIAMI | MUNICH | NEUILLY-LA DEFENSE | NEW YORK | PARIS | PERTH | RIYADH | SALT LAKE CITY |  
SAN FRANCISCO | SEATTLE | SHANGHAI | SILICON VALLEY | STUTTGART | SYDNEY | TOKYO | WASHINGTON, DC | ZURICH

February 3, 2023,<sup>2</sup> the dates for which have long been set pursuant to negotiations among the international parties and which would be very challenging, if not impossible, to reschedule. As a result of these conflicts, I am not available for either the January 27, 2023 final pretrial conference or the current trial dates.

Express Scripts has conferred with its remaining witnesses, and although some have conflicts that may make them unavailable on specific days, Express Scripts does not raise those as a reason for rescheduling the current date.

Express Scripts does not ask the Court to reschedule the trial date out of any desire to delay resolution of these proceedings but rather because of the legitimate conflicts of crucial trial participants. Plaintiff's claims against Express Scripts have been pending for several years, and Express Scripts remains committed to resolving this case expeditiously. To that end, Express Scripts respectfully suggests that targeting a trial start date for the first half of March 2023 would avoid the conflicts identified above, assuming such a date is acceptable to Your Honor and does not pose any unmovable conflicts for NYCTA.

For the reasons set forth above, Express Scripts respectfully asks that the Court amend the scheduling order and reschedule the final pretrial conference and trial. I am available at the Court's convenience should the Court have any questions.

Respectfully submitted,

/s/ Michael J. Lyle  
Michael J. Lyle

cc: All Counsel of Record (via ECF)

---

<sup>2</sup> I represent Airbus Helicopters, S.A.S. and Airbus Helicopters, Inc. in *Riggs v. Halvorson*, Case No. A-18-770467-C, in Clark County District Court in Nevada. My team and I are scheduled to be in Europe the preceding week, beginning January 23, 2023, to prepare our witnesses for deposition.